

AMENDED IN SENATE AUGUST 27, 2003

AMENDED IN SENATE JULY 23, 2003

AMENDED IN SENATE JUNE 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1729

Introduced by ~~Committee on Insurance (Vargas (Chair), Calderon, Chavez, Correa, Diaz, Dutra, Jerome Horton, Koretz, Nakano, and Ridley-Thomas)~~ Assembly Member Bermudez
(Coauthor: Senator Perata)

March 4, 2003

~~An act to amend Section 63071 of, and to add Article 8 (commencing with Section 63049.6) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, and to amend Sections 985, 1063, 1063.50, 1063.52, 1063.53, 1063.54, 1063.55, and 1063.67 of the Insurance Code, relating to insolvency, and making an appropriation therefor. An act to amend Section 1861.02 of the Insurance Code, relating to automobile insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as amended, ~~Committee on Insurance~~ Bermudez. ~~Insurance: insolvency~~ Automobile insurance: persistency.

Existing law generally regulates automobile insurance rates and rating factors. Existing law, enacted by Proposition 103, an initiative statute, provides that the absence of prior automobile coverage, in and of itself, shall not be a criterion for determining automobile insurance rates. Existing law, enacted by a statute amending Proposition 103,

provides that, notwithstanding this prohibition, an insurer may use persistency of automobile insurance coverage with the insurer, an affiliate, or another insurer as an optional rating factor.

This bill would provide that the above provisions allowing the use of persistency of coverage as an optional rating factor shall cease to be operative on January 1, 2010. It would require the California Research Bureau to contract with a nationally recognized actuarial firm to complete a study, and to report its findings to the Legislature on or before December 31, 2008, regarding whether a discount for persistency of coverage with another insurer adversely affects low-income and previously uninsured individuals, as specified. It would require that the cost of the study be reimbursed by the insurers offering a persistency discount at the time of the study.

Because the bill would amend a provision that amended Proposition 103, under the terms of the proposition, the bill would require a $\frac{2}{3}$ vote of each house of the Legislature for enactment without voter approval.

~~Existing law establishes the California Insurance Guarantee Association (CIGA) for specified purposes related to the payment of the obligations of insurers. Existing law establishes the California Infrastructure and Economic Development Bank for specified purposes related to the financing of projects in the public interest. Existing law requires that entities applying for financing from the bank meet various requirements, and places certain limitations on the bank's approval of projects.~~

~~This bill would provide that a project for the financing of the costs of claims of insolvent workers' compensation insurers at the request of CIGA shall be deemed to be in the public interest and eligible for financing by the bank. It would provide that the requirements and limitations applicable to the financing of certain projects do not apply to the financing of the costs of these claims. The bill would allow the bank to issue bonds to finance these costs and would specify how the bond proceeds may be used.~~

~~Existing law provides that the total amount of revenue bonds issued by the bank that may be outstanding at any one time shall not exceed \$5,000,000,000, exclusive of rate reduction bonds, as defined, and certain bonds issued by the bank to finance economic development facilities, as defined.~~

~~This bill would provide, instead, that the total amount of bonds issued by the bank to finance public development facilities, as defined, that may be outstanding at any one time shall not exceed \$5,000,000,000.~~

~~Existing law requires the Insurance Commissioner to take possession of the property, business, books, records, and accounts of an insurer if it appears to the commissioner that the insurer is insolvent, and to retain them subject to a court order. Existing law requires a court, upon a filing by the commissioner showing the insolvency of an insurer, to issue an order vesting title to all of the insurer's assets in the commissioner. Existing law defines "insolvency" for these purposes to mean any impairment of minimum paid-in capital, as defined, required in the aggregate of an insurer by specified provisions of law for the classes of insurance that it transacts.~~

~~This bill would expand the definition of "insolvency" to include, in addition, an inability of the insurer to meet its financial obligations when they are due.~~

~~Existing law requires CIGA to adopt a plan of operations, and any amendments thereto, as specified, and allows CIGA to borrow funds when necessary to carry out its mandate.~~

~~This bill would, in addition, allow CIGA to provide in its plan of operations for the issuance of specified financing instruments and for securing those instruments.~~

~~Existing law authorizes CIGA to pay certain claims of insolvent insurers that arise as a result of a natural disaster, and allows the Department of Insurance to issue bonds for that purpose. Existing law requires that proceeds from these bonds be deposited in the Insurance Assessment Bond Fund, and provides that all money in the fund is continuously appropriated to the department for the purposes of these provisions. Existing law allows the department to levy assessments upon insurers and to pledge money in the fund as security for payment of the principal of, and interest and redemption premiums, if any, on these bonds. Existing law prohibits the total bonded indebtedness authorized by these provisions from exceeding the level that can be supported by the revenues dedicated to retiring the bonds.~~

~~This bill would, in addition, authorize the department to issue bonds to pay claims and related expenses that arise as a result of the insolvencies of insurance companies providing workers' compensation insurance. It would require that any bonds for this purpose be issued prior to January 1, 2007, in an aggregate principal amount not to exceed \$1,500,000,000, and that any bonds issued to refund those bonds not have a final maturity exceeding the final maturity of the original bonds issued. The bill would require that assessments for this purpose be collected only from insurers providing the category of insurance for~~



~~which the bonds are issued. It would allow the bonds to be issued by the California Infrastructure and Economic Development Bank, upon request by the department or CIGA. The bill would prohibit a bond issued for this purpose from maturing more than 13 years from the date of its issue, and would allow the department to enter into or authorize ancillary obligations or derivative agreements to manage interest rate risk or security features related to the bonds.~~

~~The bill would allow the department, in addition to the purposes described above, to pledge money in the Insurance Assessment Bond Fund for reserve funds established as security for these bonds. By authorizing a new use for money deposited in a continuously appropriated fund, this bill would make an appropriation.~~

~~The bill would eliminate the restriction on the amount of total bonded indebtedness authorized by these provisions.~~

~~The bill would make related changes.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~yes~~^{no}. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Article 8 (commencing with Section 63049.6)~~
- 2 ~~is~~
- 3 *SECTION 1. Section 1861.02 of the Insurance Code is*
- 4 *amended to read:*
- 5 1861.02. (a) Rates and premiums for an automobile
- 6 insurance policy, as described in subdivision (a) of Section 660,
- 7 shall be determined by application of the following factors in
- 8 decreasing order of importance:
- 9 (1) The insured's driving safety record.
- 10 (2) The number of miles he or she drives annually.
- 11 (3) The number of years of driving experience the insured has
- 12 had.
- 13 (4) Those other factors that the commissioner may adopt by
- 14 regulation and that have a substantial relationship to the risk of
- 15 loss. The regulations shall set forth the respective weight to be
- 16 given each factor in determining automobile rates and premiums.
- 17 Notwithstanding any other provision of law, the use of any
- 18 criterion without approval shall constitute unfair discrimination.
- 19 (b) (1) Every person who meets the criteria of Section
- 20 1861.025 shall be qualified to purchase a Good Driver Discount

1 policy from the insurer of his or her choice. An insurer shall not
2 refuse to offer and sell a Good Driver Discount policy to any
3 person who meets the standards of this subdivision.

4 (2) The rate charged for a Good Driver Discount policy shall
5 comply with subdivision (a) and shall be at least 20% below the
6 rate the insured would otherwise have been charged for the same
7 coverage. Rates for Good Driver Discount policies shall be
8 approved pursuant to this article.

9 (3) (A) This subdivision shall not prevent a reciprocal insurer,
10 organized prior to November 8, 1988, by a motor club holding a
11 certificate of authority under Chapter 2 (commencing with Section
12 12160) of Part 5 of Division 2, and which requires membership in
13 the motor club as a condition precedent to applying for insurance
14 from requiring membership in the motor club as a condition
15 precedent to obtaining insurance described in this subdivision.

16 (B) This subdivision shall not prevent an insurer which
17 requires membership in a specified voluntary, nonprofit
18 organization, which was in existence prior to November 8, 1988,
19 as a condition precedent to applying for insurance issued to or
20 through those membership groups, including franchise groups,
21 from requiring such membership as a condition to applying for the
22 coverage offered to members of the group, provided that it or an
23 affiliate also offers and sells coverage to those who are not
24 members of those membership groups.

25 (C) However, all of the following conditions shall be
26 applicable to the insurance authorized by subparagraphs (A) and
27 (B):

28 (i) Membership, if conditioned, is conditioned only on timely
29 payment of membership dues and other bona fide criteria not based
30 upon driving record or insurance, provided that membership in a
31 motor club may not be based on residence in any area within the
32 state.

33 (ii) Membership dues are paid solely for and in consideration
34 of the membership and membership benefits and bear a reasonable
35 relationship to the benefits provided. The amount of the dues shall
36 not depend on whether the member purchases insurance offered by
37 the membership organization. None of those membership dues or
38 any portion thereof shall be transferred by the membership
39 organization to the insurer, or any affiliate of the insurer,
40 attorney-in-fact, subsidiary, or holding company thereof, provided

1 that this provision shall not prevent any bona fide transaction
2 between the membership organization and those entities.

3 (iii) Membership provides bona fide services or benefits in
4 addition to the right to apply for insurance. Those services shall be
5 reasonably available to all members within each class of
6 membership.

7 Any insurer that violates clause (i), (ii), or (iii) shall be subject
8 to the penalties set forth in Section 1861.14.

9 (c) The absence of prior automobile insurance coverage, in and
10 of itself, shall not be a criterion for determining eligibility for a
11 Good Driver Discount policy, or generally for automobile rates,
12 premiums, or insurability. However, notwithstanding subdivision
13 (a), an insurer may use persistency of automobile insurance
14 coverage with the insurer, an affiliate, or another insurer as an
15 optional rating factor. The Legislature hereby finds and declares
16 that it furthers the purpose of Proposition 103 to encourage
17 competition among carriers so that coverage overall will be priced
18 competitively. The Legislature further finds and declares that
19 competition is furthered when insureds are able to claim a discount
20 for regular purchases of insurance from any carrier offering this
21 discount irrespective of whether or not the insured has previously
22 purchased from a given carrier offering the discount. Persistency
23 of coverage may be demonstrated by coverage under the low-cost
24 automobile insurance program pursuant to Article 5.5
25 (commencing with Section 11629.7) and Article 5.6 (commencing
26 with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by
27 coverage under the assigned risk plans pursuant to Article 4
28 (commencing with Section 11620) of Chapter 1 of Part 3 of
29 Division 2. Persistency shall be deemed to exist even if there is a
30 lapse of coverage of up to two years due to an insured's absence
31 from the state while in military service, and up to 90 days in the
32 last five years for any other reason.

33 (d) An insurer may refuse to sell a Good Driver Discount policy
34 insuring a motorcycle unless all named insureds have been
35 licensed to drive a motorcycle for the previous three years.

36 (e) This section shall become operative on November 8, 1989.
37 The commissioner shall adopt regulations implementing this
38 section and insurers may submit applications pursuant to this
39 article which comply with those regulations prior to that date,

1 provided that no such application shall be approved prior to that
2 date.

3 (f) *The amendments made to subdivision (c) by Chapter 169 of*
4 *the Statutes of 2003 shall cease to be operative on January 1, 2010,*
5 *unless a later enacted statute deletes or extends that date. The*
6 *California Research Bureau shall contract with a nationally*
7 *recognized actuarial firm to complete a study and to report its*
8 *findings to the Legislature on or before December 31, 2008. The*
9 *study shall be based on data provided over a five-year period and*
10 *shall examine whether a portable persistency discount, as*
11 *provided for by Chapter 169 of the Statutes of 2003, adversely*
12 *affects low-income and previously uninsured individuals more*
13 *than the loyalty discount allowed by the department pursuant to*
14 *Section 2632.5(d)(11) of Title 10 of the California Code of*
15 *Regulations. The cost of the study shall be borne by the California*
16 *Research Bureau and shall be reimbursed by the insurers offering*
17 *a portable persistency discount or loyalty discount at the time of*
18 *the study, each of which shall pay an equal amount.*

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21 **All matter omitted in this version of the**
22 **bill appears in the bill as amended in the**
23 **Senate July 23, 2003 (JR 11)**
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